

**UTILITIES SERVICE BOARD SPECIAL MEETING
May 22, 2006**

UTILITIES SERVICE BOARD MEETINGS ARE RECORDED ELECTRONICALLY OR STENOGRAPHICALLY AND ARE AVAILABLE DURING REGULAR BUSINESS HOURS IN THE OFFICE OF THE DIRECTOR OF UTILITIES.

Board President Swafford called the special meeting of the Utilities Service Board to order at 5:01 p.m. The meeting was held in Conference Room 210 at the Indiana University Research Park at 501 North Morton Street in Bloomington, Indiana.

Board members present: Tom Swafford, Tim Henke, John Whikehart, Jeff Ehman, Sam Vaught, Julie Roberts and Susan Sandberg. Staff members present: Patrick Murphy, John Langley, Mike Hicks, Michael Horstman, Jane Fleig, Nathan Schulte, Vickie Renfrow, Mike Bengtson, Evelyn Brophy, Gavin Merriman and Tom Staley. Others present: Mark Menefee and Jeff Kaden representing Indiana University, Donnie Ginn, Paul Soderquist and Adam Westermann representing Black & Veatch, Ben Beard representing Gentry Estates, Ted Green representing Cook Pharmica, and Sarah Morin representing the Herald Times.

RESOLUTION APPROVING THE PER FOR DILLMAN ROAD PUMPING STATION MODIFICATIONS:

Attorney Renfrow with the City of Bloomington Legal Department explained that this is one of the steps that must be taken when getting projects funded with SRF funding. The Preliminary Engineering Report (PER) is at a point where it can be submitted to the state for approval which will allow closing on the financing by the end of June. There are two different resolutions for the two different projects. One for the Dillman Road pump station improvements and the other for the Disinfection and Dechlorination project. They each come with their own Signatory Authorization Resolution so it will be known who is authorized to sign on behalf of the City of Bloomington Utilities Department.

Utilities Director Murphy pointed out that there had been public hearings for these projects on May 9th and 10th.

BOARD MEMBER HENKE MOVED AND BOARD MEMBER EHMAN SECONDED THE MOTION TO APPROVE THE RESOLUTION APPROVING THE PER FOR THE DILLMAN ROAD PUMPING STATION MODIFICATIONS. MOTION CARRIED. 7 AYES.

SIGNATORY AUTHORIZATION RESOLUTION FOR DILLMAN ROAD PUMPING STATION MODIFICATIONS:

BOARD MEMBER HENKE MOVED AND BOARD MEMBER EHMAN SECONDED THE MOTION TO APPROVE THE SIGNATORY AUTHORIZATION RESOLUTION FOR DILLMAN ROAD PUMPING STATION MODIFICATIONS. MOTION CARRIED. 7 AYES.

RESOLUTION APPROVING THE PER FOR THE DILLMAN DECHLORINATION AND DISINFECTION PROJECT:

BOARD MEMBER EHMAN MOVED AND BOARD MEMBER HENKE SECONDED THE MOTION TO APPROVE THE RESOLUTION APPROVING THE PER FOR THE DILLMAN DECHLORINATION AND DISINFECTION PROJECT. MOTION CARRIED. 7 AYES.

SIGNATORY AUTHORIZATION RESOLUTION FOR DILLMAN DECHLORINATION AND DISINFECTION PROJECT:

BOARD MEMBER EHMAN MOVED AND BOARD MEMBER SANDBERG SECONDED THE MOTION TO APPROVE THE SIGNATORY AUTHORIZATION RESOLUTION FOR THE DILLMAN ROAD DECHLORINATION AND DISINFECTION PROJECT. MOTION CARRIED. 7 AYES.

AMENDMENT B TO THE BLACK AND VEATCH CONTRACT FOR BLUCHER POOLE WASTEWATER TREATMENT PLANT IMPROVEMENTS:

Assistant Director of Engineering Bengtson said that the design phase of the Blucher Poole Phase II project is done and the bid has been completed which finishes off the Phase I Black & Veatch contract. Things are now ready to sign a contract with the Phase II contractor for the construction phase of the project. That means that Amendment B to the contract with Black & Veatch needs to be approved.

Donnie Ginn with Black & Veatch said that they had received approval from IDEM to move forward with signing a contract with Bowen Engineering. Amendment B to the Contract with Black & Veatch includes construction phase engineering, inspection services, SCADA configuration and operation optimization and training services.

For the construction phase services Black & Veatch will be performing construction administration such as review of insurance and bonds, answering the contractor's questions, review of shop drawing submittals, attending monthly progress meetings and performing materials testing services.

For inspection services there will be a full time resident engineer on site.

Black & Veatch will also be assisting with training services and training the operators on optimizing the plant. They will also prepare a Standard Operating and Procedures manual.

Board member Vaught asked what would be the length of time until the completion of the project. Mr. Ginn replied that the contractor would have 490 days to complete the project. Black & Veatch's fees are based on 490 days with the exclusion of operation optimization which will take place after the project is finished.

Board member Henke asked why this is an amendment to a contract rather than a new one. Ms. Renfrow explained that Professional Services contracts are different than construction contracts. In general no more than 20% can be added on to construction contracts. It makes sense with Professional Services Contracts to have them continue all the way through a project as it moves from phase to phase.

Board member Henke then asked how contracts are monitored as to when payments are made and for how much. Assistant Director of Engineering Bengtson said that the Accounting Department holds the originals of all contracts and prepares spread sheets to track payments. All the contractors are also asked to track how much of the contract has been used on their billing statements.

BOARD MEMBER EHMAN MOVED AND BOARD MEMBER HENKE SECONDED THE MOTION TO APPROVE AMENDMENT B TO THE BLACK AND VEATCH CONTRACT FOR BLUCHER POOLE WASTEWATER TREATMENT PLANT IMPROVEMENTS. MOTION CARRIED. 7 AYES.

Assistant Director of Engineering thanked the USB for their support of this project.

CONSIDERATION OF REQUEST TO ADJUST HOOK-ON FEES FOR COOK PHARMICA:

Utilities Director Murphy said that this item is in response to a letter from the Mayor to Board President Swafford. It is a request that the USB consider waiving the hook-on fees for Cook Pharmica. In the letter Mayor Kruzan states that he does not have the authority to waive the fees himself. That authority rests with the USB. He also states that to his knowledge no waiver has ever before been granted for economic development purposes. The Mayor highlights the investments that Cook Pharmica has brought to the Indiana Enterprise Center. They have invested \$70 million dollars in the industrial sight that was vacant for six years. By 2008 they are expected to have created 200 new jobs paying an average of \$23 per hour excluding benefits. Cook Pharmica is a life sciences business. Bloomington and the State of Indiana have been targeting life sciences businesses for development and recruitment. It's a sight that will replace revenue that Utilities lost with the closing of Thompson. It is also a locally owned business.

The site was previously for one tenant only. It's been necessary to do significant upgrades on the infrastructure at the site to allow it to accommodate several new businesses. The City of Bloomington partially funded a new street to provide access to the businesses and had also planned to fund the water infrastructure. During the construction of the street some subsurface rock had to be removed which used up the funds that would have been available for the water infrastructure. Cook Pharmica agreed to finance the public water infrastructure improvements for the site and the City of Bloomington agreed to pay them back with payroll withholdings and with retail and use taxes collected at the site. The Indiana Enterprise Center is in a CRED district which allows the City to capture incremental revenues and use them for site improvements. Because this is a new business it will take some time to develop. That means that the revenues are not growing quickly enough to fund the infrastructure improvements. Although Cook Pharmica completed construction in 2005 they will not receive full reimbursement for the improvements until 2008. As a start up bio-pharmaceutical business Cook Pharmica has required very intensive investment. They are also required to comply with the FDA guidelines for pharmaceutical manufacture. That involves a three year permitting process, which would take until 2008. No product may be sold before the permit has been aquired. In the mean time they have to invest in the property, new equipment and employees and engage in the manufacturing process to validate their procedures for a permit.

Mr. Murphy went on to say that while this is not a standard economic development request, the Mayor believes that it generates demonstrable economic and community benefits that are unique. Cook Pharmica is only asking that the City reimburse them for the actual cost of construction excluding interest. They are not seeking any funding to cover the lost opportunity of the funds. They are asking for a waiver of the fees for both the water and wastewater hook-ups. The fees they have been billed for are \$8,794.39 for a 4 inch compact fire line meter for water. The wastewater hook-on fee associated with that meter is \$58,000.00 for a total of \$66,794.39. The two fees must be considered separately because CUD is an IURC regulated body which means there is no ability to waive the water hook-on fee.

Board member Henke asked if the water line was a public water line that serves other properties at the Indiana Enterprise Center and further on down Rogers Street. Assistant Director of Engineering Bengtson agreed that that was correct. Mr. Henke asked why this wasn't brought to the USB as a proposed project. Mr. Bengtson replied that if it had been a completely private project they would have paid for it themselves. Since the initiative came from the Mayor's office due to a desire to promote revitalization of vacant land they looked for other helpful funding resources for them. Mr. Henke asked if it couldn't have just been a part of one of the improvement projects that Utilities

budgets for every year. Mr. Murphy said that when this project was first undertaken there were State funds that were earmarked for the water upgrades but the street project used all those funds with none left over for the Utilities. Mr. Bengtson explained that normally a water line gets extended in one of two ways. They either get extended by development or by a neighborhood asking for an extension and agreeing to pay for it themselves. That means that the cost is borne by those who will benefit from it. In this case there was no reason to engage in a water upgrade project until the site was developed so it needed to be shouldered by the developer.

Board member Roberts said that she had talked to the Director of Economic Development, Ron Walker, who had been unable to tell her the value of the tax abatement that the City had given Cook Pharmica. They had said that they would get \$2 million refunded from the CRED plus the \$262,000 that they spent on the water main.

Utilities Director Murphy emphasized again that this business will have a very slow start up. They will ultimately be using a lot of water.

Board member Whikehart said that from his very first USB meeting he was hearing discussions of Rule 24 and recommendations from the Mayor's office that extensions not be approved because of a lack of economic benefit. The USB has frequently asked what would be the economic benefit that would deserve an extension. In this case Mr. Whikehart believes that the bar for economic benefit is being set very high. He asked if Cook Pharmica had gone over budget and said that they didn't have the \$262,000 to fund the project would they have come to the USB and asked them to fund that infrastructure improvement for water? Mr. Bengtson said that this has happened under special agreements where it was thought that there was some obligation to provide equity for a new project. Board member Ehman pointed out that that was what had happened in funding the road improvements. The money was spent there in lieu of spending it on the public water infrastructure. There was then some discussion about just where the money for the street project had come from.

Board member Whikehart went on to say that the situation is that this is a project that came up \$262,000 short and there is an employer who is willing to fund the project up front. The City is saying that they will reimburse Cook Pharmica out of the CRED although it may be 2008 before that can happen. He asked if it is correct that the \$8,794.39 water hook-up can not be waived but the USB does have the authority to waive the \$58,000 wastewater hook-up. Ms. Renfrow and Mr. Murphy agreed that was accurate.

Mr. Whikehart said that given that this is a project with a very high economic development bar and that Cook Pharmica said that they would pay for the project up front and the City said that they would pay them back in 2008, why not consider waiving the hook-on fee until 2008? They can pay that fee when they are reimbursed by the City.

Board President Swafford asked if a deferred payment were decided on would CUD be eligible for CRED reimbursement? Mr. Murphy said it might be necessary to go to the City Council for that to happen.

Board member Henke said that he had asked Economic Development Director Walker about this. Mr. Walker said that it would have to go through an ordinance process. He did not think that it would be a viable option for CUD to be reimbursed by the CRED.

Board member Whikehart clarified that if the hook-on payment were deferred until 2008 Cook Pharmica would pay it at that time and they, not CUD, would get reimbursed by the CRED.

Board member Roberts said that she is not sure that the USB is meant to be an economic development tool. She said she is very grateful to Cook for all that they have brought to this community just as she is grateful to IU for all they have brought to the community. Utilities is a business just as the newspaper and quarries are and they are not obligated to give any company a different rate out of gratitude or anything else. Ms. Roberts said that when she worked in advertising for the newspaper there wasn't one rate card for Cook and another for everyone else. She referred to the Cadavid case, a private family that experienced a sanitary sewer back up. The USB did not feel that the staff had been negligent or that CUD was responsible for this situation yet they would have liked to offer some assistance as a gesture of good will. Yet they did not do that, even though it would have felt good, because the line must be drawn somewhere. Ms. Roberts said that she didn't understand how this would be any different than asking a local stone quarry to give Cook Pharmica stone for free because Cook has created wonderful economic benefits in the community. Cook, the parent company is a \$3.2 billion company. She doesn't feel that the rate payers should have to bear this expense. The hook-on fees are less than one tenth of one percent of the construction fees. If the line isn't drawn somewhere every company that engages in economic development will want a break. The USB is not a part of the City Council who develops economic development tools. This is not a function of the USB.

Board member Sandberg said that she has concern over the precedent this will set. She asked if there was any historical precedent for this. Utilities Director Murphy said that he is not aware of a request of this nature having come before the Board previously. Ms. Renfrow said that in the case of the Regester development they had done some storm water improvements that were needed since they were going to be doing some work anyway and had received credit towards their hook-on fee for that work. Basically it was a payment in kind. Ms. Sandberg said that she is concerned that if this precedent is set that anyone who is benefiting the community would feel their fees should be waived.

Board member Henke said that in the ordinance there is reference to a fee being charged for each new connection to the wastewater system. He said that at least some people at Cook Pharmica had been unaware that a connection fee would be charged since they were replacing an old factory with a new one. They believed it would be the same connection.

Utilities Director Murphy pointed out that in section 8.5, Reconnection of Discontinued or Unused Water Service it says that any service that has been disconnected or unused for over a year will be required to apply for a new water service. If in the opinion of the Utility a new service line and/or a new meter are required those costs will be the responsibility of the customer. Mr. Henke said that this applied to the water fee, not the wastewater fee. Assistant Director of Engineering Bengtson replied but his reply wasn't picked up by the microphone.

Ted Green, the director of business affairs for Cook Pharmica said that in 2004 when they purchased building 1 and 2 the City agreed to do some infrastructure improvements which included the roadway and the waterline. When the time came that they needed the water, funding from the City was not available so they decided to put it in themselves. In the process of coming to an agreement with the City about reimbursement they did not ask for interest or a lost opportunity cost. At a 5% annual interest rate it would be about \$45,000 to \$60,000 that they had foregone. At the time of these discussions neither Cook Pharmica nor the City realized they would be assessed these connection fees. The line is benefiting other entities as well and if those entities paid their hook-on fees CUD is benefiting from those up-front funds because Cook put the line in. Cook has made a number of improvements at the site that benefit the City as well. They have cleared and cleaned the creek that runs the length of the property which is a storm water easement. They have added new landscaping and rock banks to the creek and they also maintain that area. They have improved and re-routed some old sewer lines. They have also granted Utility easements. They are also a good customer of CUD's.

Board member Henke said that economic development is difficult because the board doesn't want to give special treatment to anyone, but that's really what economic development is all about. He thinks Bloomington would be nothing like it is without Bill Cook. He believes that it would be good to set a precedent that if you are a corporate citizen that behaves in this way and provides these quality jobs for the community you will be treated like this. He supports waiving the fees entirely because of the quality of corporate citizen that they are, because of the water line they put in and the storm water improvements. He also thinks it's reasonable to say that this was not meant to be a new connection. He doesn't think that waivers should be given to other people but this case is exceptional.

Board member Ehman said that he is interested in Board member Whikehart's suggestion that the fees be deferred. That would give time to develop criteria for handling these kinds of requests. He agrees that the bar is very high and there is no disputing what Cook has done for the community. He thinks it's important to define where the bar is and how it is met and gotten over. By delaying the fee payment it would give the board the opportunity to come back later and waive it if that is the decision they make.

Board member Vaught said that he is very concerned about the precedent setting issue. He thinks very well of Cook and what they have done for the community but he is concerned about using the Utility as an economic development tool. This has never been done before and he thinks that the personalities should be taken out of this issue. They shouldn't be thinking about Cook. If it were anybody else it wouldn't feel the same and he doesn't think that is fair. He's not in favor of developing criteria that say that the Utility will do certain things if the customer meets certain criteria. When he first started on the USB, Utilities had a reputation of being about who you know. Both the public and the staff were uncomfortable about that. The USB has worked very hard to develop rules so people will know exactly where they stand. He is very concerned that if this line is crossed it opens things up to subjective arguments about who gets charged a fee and who doesn't. He feels bad that Cook has had to shoulder all the costs but every development entails lots of costs. The City itself shoulders substantial costs by the development of property. He is reluctant to move forward with approval of this item.

Board member Whikehart thanked Mr. and Mrs. Cook for all they have done for the community but he doesn't think that's what this is about. If this were Smith Pharmica and was going to be a \$70 million investment with 200 new jobs at \$23 per hour that's not a precedent that he is uncomfortable with. If someone else came along in another 3 months with the same situation he would not consider that to be a nuisance application. He thinks it would be something that would deserve the same consideration.

Board member Sandberg said that she is always thinking of the least in the community. As CUD deals with the increasing cost of doing business somebody has to pay and that's the rate payers. That's how the work that is done and the services that are provided are funded. Her concern is the perception of the rate payers if the USB starts making exceptions to the rule.

Board member Henke said that when rate studies are done hook-on fees aren't included because they are so difficult to predict.

Board President Swafford said that in considering this the first thing that must be done is to remove Cook from the equation. This is not about Cook. This is a precedent that would be set by this board. It hasn't been done ever before. It's a slippery slope that he's not sure the USB wants to go down. If you look at CUD's capital needs they far exceed the revenues for the next several years. There have just been some rate increases to fund some infrastructure and upgrade of equipment. Running a Utility is very expensive. It's old and difficult to maintain. If there was ever a case where this request

should be approved this would be it, but it's never been done before. He can not support waiving the fees at this time or anytime in the future. He would be willing to consider deferring the payment.

BOARD MEMBER HENKE MOVED AND BOARD MEMBER WHIKEHART SECONDED THE MOTION TO DEFER THE WASTEWATER HOOK-ON FEE FOR COOK PHARMICA. A ROLL CALL VOTE WAS TAKEN AS FOLLOWS:

SUSAN SANDBERG: NO
JEFF EHMAN: YES
TIM HENKE: YES
TOM SWAFFORD: YES
SAM VAUGHT: NO
JULIE ROBERTS: NO
JOHN WHIKEHART: YES

MOTION CARRIED. 4 AYES, 3 NAYS.

OLD BUSINESS:

No old business was presented.

NEW BUSINESS:

No new business was presented

SUBCOMMITTEE REPORTS:

There were no subcommittee reports.

STAFF REPORTS:

Utilities Director Murphy said that he, Board President Swafford, Donnie Ginn from Black & Veatch and Assistant Director of Engineering Bengtson had met with the President of Danis to discuss the status of the Monroe Water Treatment Plant project. They will meet again to discuss implementing a strategy to meet the June 30th substantial completion date and also to negotiate a change order.

Donnie Ginn elaborated on the work still to be done before they will reach substantial completion.

PETITIONS AND COMMUNICATIONS:

There were no petitions or communications.

ADJOURNMENT:

The meeting was adjourned at 6:27 p.m.